

c. The John Bezold Correspondence

36. In one of its most preposterous allegations, Four Jacks alleges that Scripps Howard contacted the regional manager of Motorola, a tenant on Four Jacks' principals' tower, with the intent of soliciting a false statement from him that the tower was fully loaded. See Petition at 26. The correspondence Four Jacks submits as support for this allegation in fact proves the opposite. See Petition Exhibits 21 and 22. It conclusively shows that only a proper, non-abusive investigation of a relevant issue occurred.

37. The correspondence with Mr. Bezold of Motorola demonstrates that Scripps Howard fully identified itself and its purpose in seeking information. It further demonstrates that, unlike the situation in KHYM Broadcasting Co. which is cited by Four Jacks, see Petition at 26, Motorola had reliable evidence on the issue involved, i.e., studies of the tower's structural capabilities. The correspondence even demonstrates that, contrary to Four Jacks' claim, Scripps Howard was not seeking any statement from Mr. Bezold at all, but was instead seeking copies of these directly relevant expert studies.

38. The correspondence also demonstrates that Scripps Howard's inquiry did not include any attempt to mislead Mr. Bezold. While Mr. Bezold's reply to Scripps Howard does state, "I feel that the line in your letter stating that the tower is currently full is not entirely true," Mr. Bezold's letter also suggests that perhaps "the wrong message was conveyed [by Mr. Bezold]." The rest of Mr. Bezold's letter offers ample evidence of how Scripps Howard

might have reasonably interpreted Mr. Bezold's view to be that the
tower was in fact full _____

**d. The Submission Of The Vlissides
Study To Baltimore County Officials**

41. Four Jacks falsely claims that the Scripps Howard-commissioned study by Vlissides Enterprises was conducted without Mr. Vlissides' firm "ever having seen or visited the tower." Petition at 14. The pleadings before the Mass Media Bureau and served on Four Jacks in fact included pictures of the tower and a statement by Mr. Vlissides about his visit to the site's periphery. See, e.g., Exhibit B to Scripps Howard's Reply to Opposition to Petition to Deny, filed February 23, 1992, at 3 (copy of page 3 attached as Exhibit I). The underlying bases for the study's conclusions as well as a description of Mr. Vlissides superb credentials as an expert in this area, were offered both in connection with Scripps Howard's Petition to Deny and in the updated analysis (based on the same study and with identical conclusions) that was included with Scripps Howard's Motion to Enlarge Issues Related to Tower Site. See Motion to Enlarge Issues Related to Tower Site, Exhibit H (of that Motion).

42. As to the validity of the Vlissides study's conclusions, it is interesting that Four Jacks has not yet offered in support of its position any of the "tower structural analyses" which were conducted for Motorola's proposed antenna additions or changes and which were provided to Four Jacks' principals. See discussion supra at ¶¶ 36-40. Instead of offering specific facts about the tower's suitability, Four Jacks has instead relied upon attacks on the reliability of the Vlissides report, a report which

is necessarily and admittedly based on some assumptions. See Four Jacks' Opposition to Petition to Deny filed February 12, 1992.

43. Turning to the contact Scripps Howard made with Baltimore County officials, Scripps Howard has made no secret of its writing to Baltimore County officials on the issue of whether Four Jacks' principals should be permitted to raise their tower's height as proposed in their application. See Motion to Enlarge Issues Related to Tower Site at 9 and Exhibit F (of that Motion). A copy of Scripps Howard's letter to the zoning officials and to the County Engineer is attached as Exhibit J.

44. Such participation before the Baltimore County government was fully appropriate for a variety of reasons. First, the right to petition government is a Constitutionally protected activity that cannot be circumscribed by the Commission, at least where, as here, it is evident that Scripps Howard's arguments were not baseless. See, e.g., Professional Real Estate Investors, Inc. v. Columbia Pictures, Indus., 61 U.S.L.W. 4450, 4452-4453 (U.S. May 3, 1993) (discussing the Noerr/Pennington principle of Constitutional immunity against any potential antitrust liability attaching to a party's protected participation in government processes) (copy attached as Exhibit K). Second, the issue raised by Scripps Howard before the Baltimore County government was one affecting public safety, and the Commission cannot as a matter of public policy discourage the raising of such issues to the appropriate government officials by persons with knowledge of an

apparent risk.⁸ Third, the Commission has never opined against comparative applicants seeking action from local government forums, and the Commission has at least implicitly endorsed the raising of zoning issues at the local level by recognizing that the issue is relevant to a comparative hearing while at the same time requiring that there be an adverse determination by the appropriate local body before the Commission will consider the matter. See, e.g., J. Sherwood, Inc., 63 F.C.C.2d 151, 156 (Rev. Bd. 1976).

45. Advising the local authorities that Four Jacks would have to raise the tower's height was both necessary and particularly appropriate here because of Four Jacks' well demonstrated approach in this proceeding of ignoring the necessity for obtaining government approvals for increasing the existing height of its tower. Four Jacks has consistently, though wrongly, claimed that it already had the necessary approvals because years

48. In sum, under precedent, Scripps Howard could not bring the lack of local zoning approval for the necessary tower height change to the Commission's attention without a local determination on the issue. Thus, Scripps Howard properly asked the appropriate question of the local authorities, confirmed that their approval would be required for the necessary construction, and offered information to the appropriate decision makers suggesting that such approval should not be granted due to concerns affecting public safety. No abuse of process can be found in this.

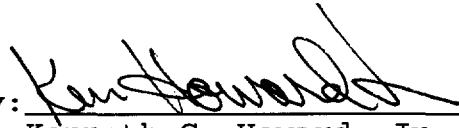
49. As demonstrated above, Scripps Howard has not taken any inappropriate or abusive actions in this proceeding or with respect to other applications filed by Four Jacks' principals. Four Jacks' request for an abuse of process issue must, therefore, be denied.

WHEREFORE, for the reasons stated above, Scripps Howard Broadcasting Company respectfully requests that the Petition to Enlarge Issues Against Scripps Howard Broadcasting Company filed by Four Jacks Broadcasting, Inc. be denied.

Respectfully submitted,

Scripps Howard
Broadcasting Company

By:



Kenneth C. Howard, Jr.
Leonard C. Greenebaum
David N. Roberts

Its Attorneys

BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

Dated: May 26, 1993

EXHIBIT A

NOV 27 1987 RECEIVED BY

DEC 1 1987

MAIL BRANCH 7040-40

501 Schildhouse, Bsq.
Pattow, Schildhouse and Wilson
1730 M Street, N.W., Suite 708
Washington, D.C. 20036

Re: WCCO-TV
Cincinnati, Ohio
NCT-670601M

WWSB-TV
Cleveland, Ohio
NCT-670601M

WRTV-TV
Detroit, Michigan
NCT-670601M

Dear Mr. Schildhouse:

This refers to the informal objection you filed on behalf of Weststar Communications ("Weststar") and Weststar Communications II ("Weststar II") to the above-captioned license renewal applications. You oppose the September 11, 1987 actions of the Chief, Mass Media Bureau, granting the above-captioned applications for renewal of license for stations WCCO-TV, Cincinnati, Ohio, WWSB-TV, Cleveland, Ohio, and WRTV-TV, Detroit, Michigan, all of which are controlled by Scripps-Boward Broadcasting Company ("Scripps-Boward"). The public notices of these actions were released on October 16 and 17, 1987. Pursuant to Section 73.1987 of the Commission's rules, an informal objection must be filed before Commission action on any application. Since your objection was filed on October 13, 1987, it is untimely. Nonetheless, we will treat the objection on its merits.

You state that Scripps-Boward failed to meet its obligation under Section 1.65 of the Commission's rules to keep its applications current by not reporting several pending court suits alleging antitrust violations by Scripps-Boward and its subsidiaries. Weststar I and Weststar II, and Rodney A. Hansen and Eugene Jacopli, who control Weststar Ltd., the general partner of Weststar I and Weststar II, have filed an antitrust suit against Scripps-Boward and its cable subsidiaries. Weststar I and II further contend that Scripps-Boward failed to report another suit Pacific West Cable Company, Inc. City of Sacramento, California. Pacific West Cable Company, an entity in which Hansen has an interest, filed a suit against the City of Sacramento. A judgment was entered on August 13, 1987, favoring the plaintiff. You maintain, in light of Scripps-Boward's failure to report the existence of the Pacific West Cable Company's suit at the time it filed its renewal applications and its subsequent failure to update its

application regarding that suit as well as the Weststar suit, constitutes sufficient reason for the Commission to stay its grants of the renewal applications.

Based on our review of your pleading, we find that Scripps-Howard was not a party to the suit brought by the Pacific West Cable Company and, therefore, was under no obligation to report a case to which it is not a party. As to your allegation that Scripps-Howard failed to report the pending Weststar suit, Question 4 of FCC Form 303-S has been revised to require an applicant to report adverse findings or final actions. The Commission has stated that it would refrain from taking an action on non-FCC misconduct, which includes anti-competitive practices, prior to adjudication by another agency or court. Character Qualification in Broadcast Licensing, 102 FCC2d 1179, 1204, 1205 recon. denied, 1 FCC Rcd. 421 (1986), appeal docketed sub nom., National Broadcasting v. F.C.C., No. 86-1179 D.C. Cir. March 17, 1986). You have not indicated any such adjudication or shown that Scripps-Howard has not complied in any way with Commission Rules and policies. Therefore, based on the foregoing, we find that you have failed to raise a substantial and material question of fact to warrant a stay of our earlier actions granting the license renewals for Stations WCPO-TV, WXYZ-TV and WXYZ-TV.

In view of the foregoing, your informal objection IS DENIED and the grants ARE AFFIRMED.

Sincerely,

Roy J. Stewart
Chief, Video Services Division
Mass Media Bureau

MEvans:ebn/vsd:MM
cula/tvbranch - sol

EXHIBIT B

239

MAR 4 1988

MAIL BRANCH

MAR 4 1988

signed by
mailed 8940-AG

(R)

Sol Schildhouse, Esq.
Farrow, Schildhouse & Wilson
1730 M Street, N. W.
Washington, D. C. 20036

Dear Mr. Schildhouse:

this is in reference to your request for reconsideration, on behalf of Westar Communications (Westar), of an action of November 27, 1987, by the Chief, Video Services Division, Mass Media Bureau, which denied Westar's objection concerning grant of the renewal applications (BACT-870601KH-MH) of Station WCPO-TV, Cincinnati, Ohio; WENS-TV, Cleveland, Ohio; WKRT-TV, Detroit, Michigan, all of which are controlled by Scripps-Howard Broadcasting Company (Scripps). Letter to Sol Schildhouse, Esq., (Video Services Division, released November 27, 1987). This is also in reference to Westar's petition to deny the renewal application (BACT-871001KH) of Scripps-Howard Broadcasting Co. for Station KSHB-TV, Kansas City, Missouri.

On March 1, 1988, on behalf of Westar, you filed a notice insisting Westar's intent not to pursue its petition for reconsideration and its petition to deny, noted above. In any event, we have fully considered the matters set forth and we conclude that there are no substantial and material questions of fact that warrant any further inquiry in either proceeding. Accordingly, Westar's petition for reconsideration and petition to deny are dismissed. In addition, having found Scripps-Howard Broadcasting Co. fully qualified in all other respects, its application for renewal of license for Station KSHB-TV, Kansas City, Missouri, has been granted this day.

Sincerely,

Roy J. Stewart, Chief
Video Services Division
Mass Media Bureau

cc: Donald P. Zaifang, Esq.

Glasser/dlr/tv/vds:RJB
Typed: February 29, 1988
DN /z/deborah/tv - sol

EXHIBIT C

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20534

FEB 22 1991

IN REPLY REFER TO:

Sol Schildhouse
Farrow, Schildhouse & Wilson
1400 16th Street, N.W.
Suite 301
Washington, D.C. 20036

Re: Assignment of WKAR-TV, Baltimore, MD
File No. BALCT-900910KE

Dear Mr. Schildhouse:

This refers to your January 29, 1991 request on behalf of Pacific West Cable Television (PacWest) to withdraw its petition for reconsideration with regard to the Commission's approval of the assignment of license application for Station WKAR-TV, Baltimore, Maryland (BALCT-900910KE). In its request for withdrawal, PacWest states that it has neither sought nor received nor been promised any money or other consideration for withdrawing its petition for reconsideration. Further, PacWest states that there are no other arrangements, oral or written, among the petitioner and the applicants concerning this withdrawal.

Despite your request for withdrawal of these pleadings, we have nevertheless fully considered the matters set forth in them and conclude that there are no substantial and material questions of fact that would warrant any further inquiry. Booth American Co., 58 F.C.C. 2d 553, 554 (1976). Accordingly, the petition for reconsideration IS DISMISSED, and the grant of the application assigning the license of WKAR-TV from Gillatt Broadcasting of Maryland, Inc. to Scripps Howard Broadcasting, IS AFFIRMED.

Sincerely,



Clay C. Fendarvis
Chief, Television Branch
Video Services Division
Mass Media Bureau

cc: Donald Zeifang, Esquire
Vincent A. Papper, Esquire
Martin Leader, Esquire

EXHIBIT D

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20541

JUL 28 7 35 AM 1992

1800b

Donald P. Ziefang
Baker & Hostetler
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304

Sol Shildhouse
Farrow, Shildhouse & Wilson
1400 16 Street, N.W.
Washington, D.C. 20036

RE: KUPL(AM) and KUPL-FM
Portland, Oregon
File Nos. BR-901002BL, BRH-901002D8

Dear Messrs. Ziefang and Shildhouse:

This is in reference to the Petition to Deny that Pacific West Cable Television (PacWest) filed against the license renewal applications for stations KUPL and KUPL-FM, licensed to Scripps Howard Broadcasting Co. The Petition to Deny alleges that the licensee's cable television subsidiary engaged in anticompetitive behavior. PacWest also raised these allegations in a civil suit, which was settled with no adjudicated findings. In June 1992, PacWest filed a Request for Dismissal of the Petition to Deny. PacWest and Scripps Howard certify that there was no consideration paid or received in exchange for dismissal of the Petition to Deny. See 47 C.F.R. Section 73.3588(a).

The parties have satisfied our requirements regarding the withdrawal of Petitions to Deny. It is nonetheless our practice to review independently issues raised in such petitions that are relevant to the basic qualifications of a renewal applicant. The Petition to Deny challenges the basic character qualifications of the licensee, but our review of these allegations finds no substantial and material question of fact as to whether grant of the KUPL/KUPL-FM renewal applications would be in the public interest. See Policy Regarding Character Qualifications in Broadcast Licensing, Gen. Docket No. 81-500, 102 FCC2d 1179 (1986), recon. granted in part and denied in part, 1 FCC Red 421 (1986), appeal dismissed sub nom., National Association for Better Broadcasting v. FCC, No. 86-1179 (D.C. Cir. June 11, 1987), modified 5 FCC Red 3252 (1990).

To the extent that PacWest's Petition to Deny in this proceeding cross-references allegations made in its Petition for Reconsideration of Scripps Howard's acquisition of Station WMAR-TV, Baltimore, we also find that those matters do not adversely impact the grant of the KUPL/KUPL-FM renewal applications. However, we make no finding as to the impact of those allegations on Station WMAR-TV. Those allegations will be resolved in the

context of the WMAR-TV proceeding.

Accordingly, PacWest's Request for Dismissal of its Petition to Deny IS GRANTED and its Petition to Deny the license renewal applications of KUPL and KUPL-FM, Portland, Oregon IS DISMISSED. Further, we find that grant of the license renewal applications would serve the public interest. Accordingly, the license renewal applications of Scripps Howard Broadcast Company for stations KUPL and KUPL-FM, Portland, Oregon ARE GRANTED.

Sincerely,


for Larry D. Eads
Chief, Audio Services Division
Mass Media Bureau

cc: Television Branch, Video Services Div. (WMAR-TV proceeding)

EXHIBIT E

EXHIBIT X B

1. On April 23, 1986, Myron Lowery filed a charge against WMC-TV, Memphis, Tennessee, a Scripps Howard station (EEOC charge No. 043-80-0595), based on race discrimination. After an investigation, the EEOC found no probable cause and issued Lowery his right-to-sue letter. On September 10, 1981, Lowery filed suit in the United States District Court for the Western District of Tennessee (Memphis) against the station seeking redress for the same acts of discrimination as listed in his charge (Case No. 81-2775-W). His basic complaints center around the alleged failure of the station to promote and generally treat him as other on-the-air anchor talent.

Lowery also filed a second charge on September 24, 1981, against the station (EEOC charge No. 043-81-0968) alleging that it retaliated against him because he filed the suit. Lowery was temporarily taken off-the-air following considerable publicity about his lawsuit. Lowery did not suffer any economic loss. The EEOC investigated the charge and found probable cause to think that Lowery had been retaliated against. The Lowery case was tried to the Court in Memphis in October, 1985; a decision has not yet been issued.

2. Debra Barnett, a former employee of WMC-TV, filed a charge (No. 043-85-0321) on December 19, 1984, with the EEOC in Memphis, alleging that her discharge was racially motivated. After investigation by the EEOC, it made a finding, on July 29, 1985, of no probable cause and issued the 90-day right to sue letter. There has been no further activity.

3. On December 21, 1985, Darryl Elion, a black production department employee of WMC-TV, filed a charge against the station with the EEOC based upon alleged race discrimination. His complaint centered around the failure of the station to promote him. The case is No. 043-86-0319. The station filed a response on April 22, 1986, and the matter is pending.

AMENDMENT

Applicant: Scripps Howard Broadcasting Company
Call Sign: WMC-TV
City of License: Memphis, Tennessee
Application: Application for Renewal of License
FCC File No.: BRCT-870401KO
Date: May 6, 1987

Scripps Howard Broadcasting Company amends Exhibits 1

June 25, 1987

Mr. William Tricarico
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: Renewal Application for WMC-TV, Memphis, Tennessee
(FCC File No. 870401KO)

Dear Mr. Tricarico:

Scripps Howard Broadcasting Company, licensee of WMC-TV, hereby amends its pending renewal application to report the following:

1. In Myron Lowery, Jr. v. WMC-TV, the parties entered into a settlement agreement settling all claims, and the Court issued a Stipulation and Order on June 12, 1987, which vacated its Memorandum and Order of April 9, 1987, and dismissed the case with prejudice.

2. In Darryl K. Elion v. WMC-TV, Darryl Elion filed a notice of withdrawal, and on 6/2/87, the EEOC terminated the proceeding.

3. Effective July 1, 1987, the following was added to and made a part of the Equal Employment Opportunity Program of Station WMC-TV:

XI. Additional Provisions.

The station affirms that its Equal Employment Opportunity goals go beyond mere statistical conformity with minority employment levels now in use in conjunction with FCC Form 395. It is the goal of the station to exceed minimal compliance with those levels.

Further, to insure compliance with the letter and spirit of its Affirmative Action Program in all areas of employment, the station's Equal Employment Opportunity Program now includes provisions that the station's officials

Mr. William Tricarico

Page 2

June 25, 1987

and managers include minority-group members and women and that they participate in the selection, evaluation and promotion procedures of the station.

Additionally, to expand the effectiveness of the station's Equal Employment Opportunity Program, a new set of procedures for recruitment, evaluation and promotion under

EXHIBIT F